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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STATE OF MONTANA,)	No. V-83-317-HLN-SEH
)	
Plaintiff and,)	
Counterclaim Defendant)	CONSENT DECREE
vs.)	
)	
ATLANTIC RICHFIELD COMPANY,)	
)	
Defendant, and.)	
Counterclaimant.)	

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I. BACKGROUND

The State of Montana's Complaint

A. The State Action commenced on December 12, 1983, when the State of Montana ("State") filed its complaint, seeking to recover from Atlantic Richfield Company ("AR") natural resource damages pursuant to Section 107 of CERCLA, and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann. § 75-10-715(2)(b), in *State of Montana v. Atlantic Richfield Company*, No. CV-83-317-HLN-SEH (D. Mont.) ("State Action"). In its complaint, the State alleged that Hazardous Substances have been released into the environment since the 1860s as a result of mining, milling, mineral processing, and related activities centered in Butte and Anaconda, Montana. The State alleged that AR remains legally responsible for these releases under CERCLA and CECRA by virtue, *inter alia*, of its own actions and its assumption of the liabilities of its alleged predecessors-in-interest, including the Anaconda Copper Mining Company and the Amalgamated Copper Mining Company. The State further alleged that natural resources have been injured as a result of the release of Hazardous Substances. Natural resources the State alleged are injured include fish, wildlife, surface water, groundwater, soil, and vegetation. As a trustee for natural resources pursuant to CERCLA and CECRA, the State is statutorily authorized to recover natural resource damages.

B. A trial in the State Action commenced on March 3, 1997, and ended in January 1998, prior to its completion. A partial settlement in the State Action which was lodged with the Court on June 19, 1998, and entered on April 19, 1999 ("State CD"), resolved all the State's claims for Natural Resource Damages except for (1) the State's Assessment and Litigation Costs incurred on or after January 1, 1998, (2) the State's claims for Restoration Damages for the Step

2 Sites , and (3) certain reservations and certain of AR's counterclaims, as these terms are defined in the State CD.

Consent Decree for the Clark Fork River Operable Unit and for the Remaining State of Montana Clark Fork Basin Natural Resource Damage Claims

C. This Consent Decree (also referred to as "State CD II" herein and in the Clark Fork Site Consent Decree) is being filed contemporaneously with the Consent Decree for the Clark Fork River Operable Unit and for Remaining State of Montana Clark Fork Basin Natural Resource Damage Claims ("Clark Fork Site Consent Decree"). The Clark Fork Site Consent Decree is entered into by the United States, the State of Montana and AR. The Clark Fork Site Consent Decree resolves, subject to certain reservations of rights by the United States and the State, the United States' and the State's claims for response costs and response actions relating to the Clark Fork River Site, the United States' reserved NRD claims for the Grant-Kohrs Ranch National Historic Site and certain parcels of BLM land, all of the State's reserved claims for restoration damages relating to the Step 2 Sites, and the State's claims for response costs and response actions relating to certain State-owned lands within the Anaconda Regional Water, Waste and Soils Operable Unit ("ARWW&S OU") of the Anaconda Smelter NPL Site. This Consent Decree resolves the State's and AR's claims for response costs and response actions as to additional State-owned lands within the ARWW&S OU, and contains certain agreements between the State and AR relating to State obligations under this Consent Decree and the Clark Fork Site Consent Decree.

The Clark Fork Site

D. Butte, Montana was the site of mining, milling and smelting activities from the 1860s to the present. In response to the release and threatened release of Hazardous Substances from facilities in and around Butte into Silver Bow Creek, EPA placed the original Silver Bow

Creek Superfund Site on the National Priorities List ("NPL") by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. The Silver Bow Creek Superfund Site was later extended to include the Clark Fork River to the Milltown Reservoir through administrative action taken by EPA. In February 1990, the Clark Fork River portion of the Silver Bow Creek / Butte Area Superfund Site was administratively transferred to the Milltown Reservoir Superfund Site. After the transfer, the entire site became known as the Milltown Reservoir/Clark Fork River Superfund Site. As between the State and AR, this Consent Decree supplements the Clark Fork Site Consent Decree which addresses the Clark Fork River Operable Unit of the Milltown Reservoir / Clark Fork River Superfund Site, and is referred to as the "Clark Fork Site."

E. After conducting other data collection and liability searches, EPA, in consultation with the Montana Department of Environmental Quality ("DEQ"), initiated a Remedial Investigation and Feasibility Study ("RI/FS") for the Clark Fork Site pursuant to and in accordance with 40 C.F.R. § 300.430. These activities were performed primarily by AR in accordance with amendments to Administrative Order on Consent Docket No. CERCLA-VIII-90-07, and were completed in 2003. In August of 2002, EPA proposed a combination of the analyzed alternatives as the most appropriate remedy for the Clark Fork Site and, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the Clark Fork Site Proposed Plan in a major local newspaper of general circulation. The United States Department of Interior concurred in EPA's proposed plan. In April of 2004, EPA, in consultation with the State, made its final decision regarding a remedy for the Clark Fork Site in accordance with CERCLA, and in a manner not inconsistent with CERCLA's governing regulations in the National Contingency Plan ("the NCP"), 40 C.F.R. Part 300. EPA issued a Record of Decision ("ROD") regarding its

selection in April of 2004, and published notice of the Clark Fork Site ROD in a major local newspaper of general circulation on May 4, 2004. DEQ gave its concurrence on behalf of the State of Montana. The United States Department of Interior also concurred in the Clark Fork Site ROD.

The Anaconda Smelter NPL Site and the Anaconda Regional Water, Waste and Soils Operable Unit

F. The Anaconda Smelter NPL Site is located at the southern end of the Deer Lodge Valley, at and surrounding the location of the former Anaconda Minerals Company ore-processing facilities. These facilities were developed to remove copper from ore mined in Butte, and operated from about 1894 through 1980, when the smelter closed. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA listed the Anaconda Smelter NPL Site on the NPL on September 8, 1983, 48 Fed. Reg. 40658. The ARWW&S OU is one of the operable units of the Anaconda Smelter NPL Site.

G. The ARWW&S OU RI/FS examined alternatives for a final remedial action at the ARWW&S OU. In October 1997, EPA proposed one of these alternatives as the most appropriate remedy for the ARWW&S OU of the Anaconda Smelter NPL Site and, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the proposed plan in a major local newspaper of general circulation. In September 1998, EPA, with the concurrence of the State, issued the Record of Decision for the ARWW&S OU ("ARWW&S ROD"). Notice of the final plan was published in accordance with Section 117(b) of CERCLA. Remedial design for the ARWW&S OU began in 2000 and is still in progress. Remedial action has also been conducted on portions of the OU. EPA anticipates preparing an Explanation of Significant Differences to document changes to the ARWW&S ROD.

H. This Consent Decree addresses areas of contamination on State Lands within the Anaconda Smelter NPL Site, including State-owned Property within Remedial Design Units (“RDUs”) 1 and 15, that are part of the ARWW&S OU.

I. The State and AR agree to address in this Consent Decree:

1. the State’s commitment under this Consent Decree to promptly reimburse AR for any Further Response Costs up to \$9.4 million, as that term is defined in the Clark Fork Site Consent Decree, paid by AR pursuant to the terms of the Clark Fork Site Consent Decree; and

2. the State’s obligation to perform the State Property Remedial Commitments pursuant to the terms of the Clark Fork Site Consent Decree and this Consent Decree.

3. The State’s obligations to perform the State Lands Obligations pursuant to the terms of this Consent Decree.

No Admission of Liability

J. By entering into this Consent Decree, AR and the State do not admit to any liability arising out of the transactions or occurrences either that were alleged, or could have been alleged, in the complaints, amended complaint, or counterclaims filed in the State Action or the Federal Action. In addition, AR does not admit or acknowledge that any alleged release or threatened release of Hazardous Substances at or from the Clark Fork Site or the Anaconda Smelter NPL Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

K. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup and restoration of the Clark Fork Site, and State Lands

within the ARWW&S OU, and will avoid prolonged and complicated litigation between the Parties and that this Consent Decree is fair, reasonable, in the public interest, and consistent with the goals of CERCLA and CECRA.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607, and 9613(b). This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. In addition, this Court has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Each Party hereby agrees not to oppose entry of this Consent Decree by this Court unless: (a) the United States or the State has notified AR in writing that either the United States or the State no longer supports entry of the Clark Fork Site Consent Decree after consideration of public comment; or (b) the State notifies AR that it no longer supports entry of this Consent Decree after consideration of public comment, as provided in Section XV (Lodging and Opportunity for Public Comment) below.

III. DEFINITIONS

"ARAR" shall mean an applicable or relevant and appropriate requirement, criterion, standard, or limitation of federal or state law within the meaning of Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), identified in the ARWW&S ROD.

"AR" shall mean the Defendant, Atlantic Richfield Company, its divisions and subsidiaries, including ARCO Environmental Remediation L.L.C. (AERL), and any predecessors in interest. It shall also mean any successors in interest to the extent that any such successor's

liability at the Clark Fork Site or the Anaconda Smelter NPL Site derives from the liability of the Atlantic Richfield Company, its divisions and subsidiaries, including AERL, and any predecessors in interest.

"ARWW&S ROD" shall mean the Anaconda Regional Water, Waste and Soils Operable Unit Record of Decision dated September 1998 and any amendments and Explanations of Significant Differences issued thereafter.

"CECRA" shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, §§ 75-10-701 et seq., MCA.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Certification of Completion of the Remedial Action" shall mean EPA's certification, in consultation with the State, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the remedial action and any modifications thereto have been completed at the ARWW&S OU of the Anaconda Smelter NPL Site in accordance with the requirements of CERCLA, the NCP, and the ARWW&S ROD and any modifications thereto, including certification that performance standards have been attained.

"Clark Fork Site" shall mean: the surface water, streambed sediments, tailings, soils, groundwater, aquatic resources, terrestrial resources, irrigation ditches and related sediment deposition and contaminated property, and air, all located within the 100-year historic floodplain of the Clark Fork River in Montana. The Clark Fork Site shall also include irrigation ditches that historically conveyed contaminated water from the Clark Fork River and related sediment deposition and contaminated property adjacent to the 100-year historic floodplain of the Clark Fork River, as described in the 2004 Clark Fork River Operable Unit Record of Decision. The

Clark Fork Site extends from the confluence of the old Silver Bow Creek channel with the reconstructed lower Mill-Willow bypass to the maximum Milltown Reservoir high pool reservoir level (elevation 3265.5, NAVD 88). A map showing the approximate boundaries of the Clark Fork Site is attached to the Clark Fork Site Consent Decree as Appendix F.

“Clark Fork Site Consent Decree” shall mean the consent decree among the United States, the State and AR and all appendices attached thereto that is lodged in the State Action and the Federal Action contemporaneously with this Consent Decree.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control. This Consent Decree shall also be known as State CD II, and is referred to as such in the Clark Fork Site Consent Decree that is lodged contemporaneously with this Consent Decree.

"DEQ" shall mean the Montana Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

"Effective Date" shall mean 60 days from the date that this District Court enters the Consent Decree, unless an appeal of the entry and judgment is filed during the 60-day period; if an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

"Federal Action" shall mean *United States v. Atlantic Richfield Company*, No. CV-89-039-SEH (D. Mont.).

“Further Response Costs” shall mean up to \$9.4 million in response costs incurred by EPA and/or the State in developing and implementing the Clark Fork Site work (as “Work” is

defined in the Clark Fork Site Consent Decree), after EPA and/or the State have already incurred \$83.3 million, plus Earnings, in such costs.

"Hazardous Substance" shall mean a hazardous substance within the meaning of Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14), or a hazardous or deleterious substance within the meaning of Section 75-10-701(8), MCA.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

"Parties" shall mean the State and AR.

"Remedial Action" shall mean those activities, except for operation and maintenance, undertaken by the State to complete the State Property Remedial Commitments under the terms of the Clark Fork Site Consent Decree.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Smelter Hill Area Uplands Resources Restoration Plan" shall mean the document prepared by the State, and any amendments thereto adopted by the State, entitled the "Draft Conceptual Smelter Hill Area Uplands Resources Restoration Plan." The Smelter Hill Area Uplands Resources Restoration Plan describes performance standards applicable to the State Property Remedial Commitments and the scope of the State Property Remedial Commitments under the Clark Fork Site Consent Decree. Amendments revising the nature and extent of, or the performance standards for, the State Property Remedial Commitments require the concurrence of EPA and, unless deemed unnecessary by EPA, adoption by EPA. The Smelter Hill Area Uplands Resources Restoration Plan and its Appendix G (Consent Decree Obligations of the State), excluding other appendices, is attached as Appendix C to this Consent Decree.

"State" shall mean the State of Montana, including all of its departments, agencies, and instrumentalities.

"State Action" shall mean *State of Montana v. Atlantic Richfield Company*, No. CV-83-317-HLN-SEH (D. Mont.).

"State CD" shall mean the consent decree lodged in the State Action on June 19, 1998, and entered on April 19, 1999.

"State Interest" shall mean the rate equal to the interest yield on the State's Trust Funds Bond Pool ("TFBP") managed by the Montana Board of Investments or any successor agency. This interest shall be calculated from the due date and compounded on a monthly basis, and the interest rate for each month shall be calculated by dividing the interest distribution per share on the TF BP (monthly dividend per share) by the share price (unit price) for the TFBP at the end of that month. Interest for periods of less than a full month shall be calculated based upon the ratio of the number of days during which interest is accruing over the number of calendar days in the particular month.

"State NRD Settlement Amount" shall mean the \$ 72.5 million to be paid by AR to the State pursuant to Paragraphs 16 and 17 of the Clark Fork Site Consent Decree.

"State Lands" means the real property as shown on the map in Appendix A to this Consent Decree.

"State Lands Obligations" shall mean that portion of the Work for State Lands described in Section VII (State Performance of State Lands Obligations), and any modifications thereto, including any additional response actions required to meet performance standards (including ARARs for the ARWW&S ROD), as described in this Consent Decree.

"State-owned Property" shall mean the real property owned by the State, as shown on the maps attached as Appendix B to this Consent Decree. The same maps are attached as Appendix J to the Clark Fork Site Consent Decree.

“State Property Remedial Commitments” shall mean the work, and any modifications thereto, including any additional response actions required to meet performance standards (including ARARs for the ARWW&S ROD), as described in the Clark Fork Site Consent Decree, and said work is enforceable under this Consent Decree. The work for the State Property Remedial Commitments is described in: (1) the Remedial Action Work Plan/Final Design Report for ARWW&S OU Remedial Design Unit 1 – Stucky Ridge (June 15, 2005) concerning State-owned Property in Section 36; and (2) Remedial Action Work Plan / Final Design Report for ARWW&S OU Remedial Design Unit 15 – Mt. Haggin Uplands (November 2007), each as provided for in the Smelter Hill Area Uplands Resources Restoration Plan (Appendix C to this Consent Decree). The Remedial Action Work Plan/Final Design Report for Remedial Design Unit 1 and the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 15 have been approved by EPA in consultation with DEQ and are contained within the site record for the Anaconda Smelter NPL Site and are attachments to the Smelter Hill Area Uplands Resources Restoration Plan.

“Step 2 Sites” shall mean the following three geographic areas described in the State’s Restoration Determination Plan, dated October 1995, and the natural resources within those areas: (1) Area One Groundwater and Surface Water Resources; (2) Smelter Hill Area Upland Resources; and (3) Clark Fork River Aquatic and Riparian Resources.

“Subparagraph” shall mean a portion of a Paragraph identified by an upper or lower case letter or by a lower case Roman numeral.

“Superfund Memorandum of Agreement” or “SMOA” shall mean the agreement among EPA, the United States Department of Interior, and the State which, in addition to the provisions of the Clark Fork Site Consent Decree, memorializes the manner in which the remedy, federal

restoration, and State restoration will be implemented or coordinated at the Clark Fork Site and the manner in which the State Property Remedial Commitments will be implemented by the State. Only the State and the United States may enforce the terms of the SMOA. Nothing in this Consent Decree shall be deemed to create a right of any other party, including, but not limited to AR or any third party, against the State or the United States to enforce the terms of the SMOA.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

"Work" shall mean all activities the State is required to perform to complete the State Property Remedial Commitments pursuant to the Clark Fork Site Consent Decree and this Consent Decree, and the State Lands Obligations pursuant to this Consent Decree.

IV. GENERAL PROVISIONS

1. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are:

- a. to document, as between the State and AR, the State's responsibility for payment of any and all Further Response Costs billed to AR by EPA under Paragraph 8 of the Clark Fork Site Consent Decree, unless successfully disputed pursuant to the dispute resolution terms of Clark Fork Site Consent Decree.
- b. to document, as between the State and AR, the State's commitment to implement the response actions set forth in and required by the ARWW&S ROD for the State Property Remedial Commitments, as required by the Clark Fork River Consent Decree and also this Consent Decree.
- c. to document, as between the State and AR, the State's commitment to implement the response actions required by the ARWW&S ROD for the State Lands Obligations, as required by this Consent Decree.

V. STATE REIMBURSEMENT OF FURTHER RESPONSE COSTS

2. If EPA bills AR for any Further Response Costs pursuant to Paragraph 8 of the Clark Fork Site Consent Decree, the State shall pay up to \$9.4 million to AR for Further Response Costs, billed to AR by EPA to the extent such response costs are actually incurred by EPA and paid by AR. Under Paragraph 8 of the Clark Fork Site Consent Decree, AR has the right to dispute costs billed by EPA. The State shall reimburse AR for such Further Response Costs incurred by AR no more than sixty (60) days after the State receives AR's written request for reimbursement of those Further Response Costs. AR's written request for reimbursement shall include the record of payment required pursuant to Subparagraph 8.c of the Clark Fork Site Consent Decree. AR agrees that it may not dispute the payment of any particular Further Response Costs bill, under Paragraph 8 of the Clark Fork Site Consent Decree, after AR has submitted a written request for reimbursement of the costs for such bill to the State pursuant to this Section V of the Consent Decree.

3. If the State, contrary to the terms of this Consent Decree does not reimburse AR for such Further Response Costs within 60 days of receipt of AR's notice requesting reimbursement, the State shall pay State Interest on the amount of Further Response Costs incurred by AR until paid. The State shall pay all such costs and accrued interest, if any, to AR by electronic funds transfer pursuant to directions AR provides to the State for payment to AR.

VI. STATE PERFORMANCE OF STATE PROPERTY REMEDIAL

COMMITMENTS

4. Paragraphs 4 – 6 of this Consent Decree describe certain State obligations under the Clark Fork Site Consent Decree to perform response actions related to State-owned Property. The State commits to perform the State Property Remedial Commitments on State-owned Property as provided in Paragraph 66 of the Clark Fork Site Consent Decree, including any

additional response actions, monitoring, and operation and maintenance within the “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments” as that term is defined in Subparagraph 66.b of the Clark Fork Site Consent Decree. AR may enforce the State’s obligation to perform the State Property Remedial Commitments as provided in Paragraph 66 of the Clark Fork Site Consent Decree as Work required under this Consent Decree, subject only to the limitations of Paragraph 7 below.

5. Certification of Completion for the State Property Remedial Commitments

Remedial Action. The State shall timely complete and submit to EPA a draft Certification of Completion for the State Property Remedial Commitments Remedial Action for review and comment, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), in accordance with EPA regulations and guidance, upon completion of all construction and upon attaining all applicable ARWW&S ROD performance standards for a period of at least 2 years.

a. The State shall attempt to incorporate or resolve all EPA comments and shall notify EPA of the disposition of their comments prior to completing the final document. The State acknowledges and agrees that EPA may request that the State perform any additional response actions, if EPA determines that the Remedial Action or any portion thereof: (i) has not been completed in accordance with the Clark Fork Site Consent Decree or SMOA; or (ii) that applicable ARWW&S performance standards have not been achieved for a period of at least two years. The State shall perform any additional activities required to obtain final Certification of Completion of the State Property Remedial Commitments Remedial Action from EPA to the extent that such additional work is consistent with the “scope of the remedy selected in the ARWW&S

OU ROD to be implemented by the State Property Remedial Commitments” as that term is defined in Subparagraph 66.b of the Clark Fork Site Consent Decree.

6. Certification of Completion for the State Property Remedial Commitments Work.

The State shall prepare and timely submit to EPA for review and comment a draft Certification of Completion for the State Property Remedial Commitments Work, after concluding that all operation and maintenance activities have been performed by the State in accordance with the ARWW&S ROD, the Clark Fork Site Consent Decree, and the SMOA, and that operation and maintenance is no longer necessary.

a. The State shall attempt to incorporate or resolve all EPA comments and shall notify EPA of the disposition of its comments prior to completing the final document. The State acknowledges and agrees that EPA may request that the State perform additional response actions if EPA determines: (i) that operation and maintenance or any portion thereof has not been completed in accordance with the ARWW&S ROD, the Clark Fork Site Consent Decree, the SMOA, and operation and maintenance plans. The State shall perform any additional activities that are consistent with the “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments” as that term is defined in Subparagraph 66.b of the Clark Fork Site Consent Decree.

7. Except as provided in Section V and Section VII, this Consent Decree imposes no obligation or requirement upon the State to perform response actions or pay costs of response for actions outside of State-owned Property, and imposes no obligation or requirement upon the State to:

(a) perform response actions or pay costs of response for actions outside the “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments.” The “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments” means the stabilization and revegetation of soils, in accordance with reclamation ARARs, and stormwater best management practices and controls on State-owned Property;

(b) perform response actions or pay costs of response for actions that are required pursuant to any Pre-Certification or Post-Certification reservations for new information / unknown conditions, as set forth in the Clark Fork Site Consent Decree, this Consent Decree and any future order or future consent decree; or

(c) perform response actions or pay costs of response for actions that arise under Paragraph 115 (United States’ General Reservations of Rights), Paragraph 125 (State’s General Reservations of Rights as to AR) of the Clark Fork Site Consent Decree, or any General Reservation of Rights in any future order or future consent decree, except as to Subparagraphs 115.g and 125.g of the Clark Fork Site Consent Decree, the State shall perform as Work under this Consent Decree those actions or reimburse those costs for actions on State-owned Property that are within the “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments” as that term is defined in Subparagraph 66.b of the Clark Fork Site Consent Decree.

VII. STATE PERFORMANCE OF STATE LANDS OBLIGATIONS

8. Paragraphs 8 through 14 describe the scope of the State Lands Obligations of the State to AR pursuant to which the State shall perform response actions and pay response costs, if

any, pertaining to State Lands as part of the Work required under this Consent Decree. If either EPA or any agency of the State seek to compel AR to perform any response action for State Lands, including any emergency response, or to recover the costs of such response actions, the State is required under this Consent Decree to promptly perform and pay for such response actions, subject to the limitations of Paragraph 9. The State shall reimburse AR for any costs of such response actions AR incurs and any penalties AR pays due to the State's failure to timely perform such response actions, subject to the limitations of Paragraph 9.

9. Except as provided in Section V, this Consent Decree imposes no obligation or requirement upon the State to perform response actions or pay costs of response for actions outside of State Lands, and imposes no obligation or requirement upon the State to:

(a) perform response actions or pay costs of response for actions outside the "scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Lands Obligations" For purposes of this Subparagraph, the "scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Lands Obligations " means the stabilization and revegetation of soils, in accordance with reclamation ARARs, and stormwater best management practices and controls on State Lands;

(b) perform response actions or pay costs of response for actions that are required pursuant to any Pre-Certification or Post-Certification reservations for new information / unknown conditions, as set forth in the Clark Fork Site Consent Decree, this Consent Decree or any future order or future consent decree; or

(c) perform response actions or pay costs of response for actions that arise under Paragraph 115 (United States' General Reservations of Rights), Paragraph 125 (State's General Reservations of Rights as to AR) of the Clark Fork Site Consent Decree,

or any General Reservation of Rights in any future order or future consent decree; except as to Subparagraphs 115.g and 125.g of the Clark Fork Site Consent Decree, the State shall perform as Work under this Consent Decree those actions or reimburse those costs for actions on State Lands that are within the “scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Lands Obligations” as that term is defined in Subparagraph 9.a of this Consent Decree.

10. The State’s commitment to perform Work under this Consent Decree and carry out the State Lands Obligations includes the State’s commitment to AR to perform all response actions and pay all costs of response for actions on State-owned Property that are within the “scope of the remedy selected in the ARWW&S ROD to be implemented by the State Property Remedial Commitments,” as that term is defined in Subparagraph 66.b of the Clark Fork Site Consent Decree. Further, the State is obligated to perform such actions and pay such costs under this Consent Decree notwithstanding any limitation on the work obligations of the State agreed upon by the State and EPA in the Clark Fork Site Consent Decree regarding the scope of work or the performance standards for the work described in the Smelter Hill Area Uplands Restoration Plan.

11. The State shall cooperate with EPA in completion of any review of any response actions for State Lands that is completed by EPA in accordance with Section 121(c), 42 U.S.C. §9621(c), and any applicable regulations. The State shall cooperate with EPA in its efforts to conduct the review described in this Paragraph through the provision of data, records, and similar materials.

12. If EPA determines that the State Lands Obligations response actions for State Lands are not protective of human health or the environment, the State shall, as between AR and

the State, implement any additional response actions for State Lands selected by EPA, subject to the limitations of Paragraph 9 above.

13. As between AR and the State, the State is responsible for and will carry out any community relations plan or activities required by EPA that explain or relate to performance of the State Property Remedial Commitments and the State Lands Obligations, and satisfy any EPA reporting, record keeping, and access and institutional controls requirements related to performance of the State Property Remedial Commitments and the State Lands Obligations.

14. Within 60 days of the State's receipt of AR's notice requesting reimbursement of response costs recoverable by AR under this Consent Decree, the State shall reimburse AR for those response costs, and any such response costs that are not paid within this 60 day period shall accrue State Interest. The State shall pay all such costs and accrued interest, if any, to AR by electronic funds transfer pursuant to directions AR provides to the State for payment to AR.

VIII. DISPUTE RESOLUTION

15. In the event a dispute should arise solely between AR and the State regarding the interpretation or implementation of this Consent Decree, AR and the State shall make a good faith effort to resolve the dispute prior to invoking the continuing jurisdiction of the Court. Prior to invoking the Court's jurisdiction to resolve a dispute, the State or AR shall deliver to the other a written statement detailing the matters in dispute and proposing terms to resolve the dispute. Except where the party seeking to invoke the Court's jurisdiction can demonstrate a significant need for a more prompt resolution, such statement of the dispute must be delivered to the other party at least fifteen (15) days prior to filing any motion or application for relief from the Court.

IX. COVENANTS AND RESERVATIONS

16. This Consent Decree is without prejudice to AR's and the State's covenants and reservations set forth in Sections XXIII and XXIV of the Clark Fork Site Consent Decree. The

covenants and reservations of the Parties below supplement the AR and State covenants and reservations set forth in the Clark Fork Site Consent Decree.

17. State's Covenant Relating to the State Lands Obligations. Subject to the reservations in Paragraphs 18, 19, 20 and 21 of this Consent Decree and Paragraph 125 (State's General Reservations of Rights as to AR) of the Clark Fork Site Consent Decree, the State covenants not to sue or to take administrative action against AR and its respective officers, directors and employees, to the extent that the liability of such officers, directors, and employees arises solely from their status as officers, directors, and employees, pursuant to Sections 106, 107(a)(4)(A), (B), and (D), and 113(f) of CERCLA, Sections 3004(u) and (v), 3008 and 7002 of RCRA, Sections 309(a), 311, 504, and 505 of the Clean Water Act, Sections 601, 602, 611, 613, 614 (except with respect to enforcement of an emergency order under 75-5-621), 615, 617, 631, and 635 of the Montana Water Quality Act, and Sections 711, 715(2)(A), and 722 of CECRA, including injunctive relief or costs, related to the State Property Remedial Commitments and the State Lands Obligations. The covenant shall be effective upon the State's receipt of State NRD Settlement Amount, with interest, pursuant to Paragraphs 16 and 17 of the Clark Fork Site Consent Decree, and conveyance of the Beck Ranch pursuant to Paragraph 18 of the Clark Fork Site Consent Decree. These covenants extend only to AR and their respective officers, directors, and employees and do not extend to any other person.

18. State's Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

- a. to perform further response actions relating to State Property Remedial Commitments; or
 - b. to reimburse the State for additional costs of response relating to the State Property Remedial Commitments
- if, prior to certification of completion of the remedial action for the State Property Remedial Commitments:

- (i) Conditions relating to the State Property Remedial Commitments, previously unknown to the State, are discovered, or
- (ii) information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicate that the remedial action for the State Property Remedial Commitments is not protective of human health or the environment.

19. State's Post-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the State Property Remedial Commitments; or

b. to reimburse the State for additional costs of response relating to the State Property Remedial Commitments

if, subsequent to certification of completion of the remedial action for the State Property Remedial Commitments:

(i). conditions relating to the State Property Remedial Commitments, previously unknown to the State, are discovered, or

(ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the remedial action for the State Property Remedial Commitments is not protective of human health or the environment.

20. State's Pre-Certification Reservations Relating to the State Lands Obligations.

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the State Lands Obligations;
or

b. to reimburse the State for additional costs of response relating to the State Lands Obligations

if, prior to Certification of Completion of the Remedial Action:

- (i). conditions relating to the State Lands Obligations, previously unknown to the State, are discovered, or
- (ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicate that the remedial action for the State Lands Obligations is not protective of human health or the environment.

21. State's Post-Certification Reservations Relating to the State Lands Obligations.

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

- a. to perform further response actions relating to the State Lands Obligations;
- or
- b. to reimburse the State for additional costs of response relating to the State Lands Obligations

if, subsequent to Certification of Completion of the Remedial Action:

- (i). conditions relating to the State Lands Obligations, previously unknown to the State, are discovered, or
- (ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the remedial action for the State Lands Obligations is not protective of human health or the environment.

22. Information and Conditions Known to the State Relating to the State Property Remedial Commitments and the State Lands Obligations. For purposes of Paragraph 18 (State's

Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments) and Paragraph 20 (State's Pre-Certification Reservations Relating to the State Lands Obligations), the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging of this Consent Decree that are described or contained in any of the documents or other records identified in Paragraph 123 of the Clark Fork Site Consent Decree. For purposes of Paragraph 19 (State's Post-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments) and Paragraph 21 (State's Post-Certification Reservations Relating to the State Lands Obligations), the information and the conditions known to the State shall include only that information and those conditions known to the State as of Certification of Completion of the Remedial Action and described or contained in any of the documents or other records identified in Paragraph 123 of the Clark Fork Site Consent Decree.

23. AR's Covenant Not to Sue the State Regarding State Property Remedial Commitments and the State Lands Obligations. Subject to the reservations in Paragraph 131 (AR's Reservation of Rights) of the Clark Fork Site Consent Decree and conditioned upon satisfactory performance by the State of its obligations under this Consent Decree, AR hereby covenants not to sue and agrees not to assert any past, present, or future claims or causes of action against the State, its agencies, instrumentalities, officials, employees, agents, and contractors relating to the State Property Remedial Commitments and the State Lands Obligations, as defined herein, including:

- a. any direct or indirect claim related to the State Property Remedial Commitments and the State Lands Obligations for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the

Orphan Share Account (established pursuant to MCA 75-10-743), or any other provision of law;

b. any claims under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613; RCRA Sections 3004(u) and (v), 3008, and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972; Sections 311, 504, and 505 of the Clean Water Act, 42 U.S.C. §§ 1321, 1364, and 1365; and under CECRA Sections 711, 715, 719, 722, 724, and 726, MCA 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726, and any other theory of recovery or provision of law related to the State Property Remedial Commitments and the State Lands Obligations.

c. any claims arising out of response or restoration actions for the State Property Remedial Commitments and the State Lands Obligations, including claims based on selection or implementation of response or restoration actions, oversight of response or restoration actions, or approval of plans for such actions. Provided, however, this covenant does not apply to response costs or response actions related to the State's Work obligations as described in Section VI and Section VII of this Consent Decree, in the event any administrative or judicial claim is asserted against AR for response costs or response actions related to the State's obligations as described in this Consent Decree.

24. AR's Reservation of Rights. AR reserves, and this Consent Decree is without prejudice to:

a. claims against the State under Chapter 9 of Title 2 of Montana Code Annotated for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of his office or employment under circumstances where the State,

if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not an employee, as that term is defined in 2-9-101, MCA; nor shall any such claim include a claim based on EPA's selection or implementation of response actions or the State's selection of response or restoration actions. The foregoing applies only to claims which are brought pursuant to any Federal or State statute other than CERCLA or CECRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or CECRA;

b. defenses to any claim asserted by the State against AR under Paragraph 18 (State's Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments), Paragraph 20 (State's Pre-Certification Reservations Relating to the State Lands Obligations), Paragraph 19 (State's Post-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments) and Paragraph 21 (State's Post-Certification Reservations Relating to the State Lands Obligations), but only for defenses arising from the same matters, transactions, and occurrences that are raised in or directly related to the State's claims against AR.

X. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to or upon another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise

specifically provided, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the State and AR, respectively.

As to the State:

Robert Collins
Mary Capdeville
Greg Mullen
State of Montana
Office of the Attorney General
Natural Resource Damage Program
1301 East Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

As to AR:

Robin Bullock
Trey Harbert
ARWW&S OU Project Coordinator
Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701

Jean A. Martin
Atlantic Richfield Company
4101 Winfield Road
Canterra 3 MC412E
Warrenville, Illinois 60555

XI. STATE ACCOUNTS ESTABLISHED UNDER

CLARK FORK SITE CONSENT DECREE

26. Pursuant to Section IX (Establishment, Maintenance and Operation of Accounts) of the Clark Fork Site Consent Decree, the State will establish, operate and maintain seven separate State accounts for various purposes, as provided under the terms of the Clark Fork Site Consent Decree. The availability of funds in the Smelter Hill Area Uplands Restoration Account established by the State pursuant to Subparagraph 27.b of the Clark Fork Site Consent Decree

shall not limit the State's obligations under Section VI (State Performance of State Property Remedial Commitments) and Section VII (State Performance of State Lands Obligations) of this Consent Decree.

27. The Parties expect that the special revenue accounts established by the State to hold funds paid by AR under the Clark Fork Site Consent Decree will meet the requirements of a settlement fund under Section 468B of the Internal Revenue Code of 1986, as amended 26 U.S.C. 468B. The State has or will establish the special revenue accounts described in the Clark Fork Site Consent Decree under state law, and will continue to maintain these accounts as provided in the Clark Fork Site Consent Decree.

XII. RETENTION OF JURISDICTION

28. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section VIII (Dispute Resolution) hereof. This Consent Decree does not in any way expand or grant further rights to the State or AR under the Clark Fork Site Consent Decree. This Consent Decree does not authorize either Party to apply to the Court under the Clark Fork Site Consent Decree for an order, direction, or relief as to this Consent Decree. Nothing in this Paragraph 28 impairs the right of either Party to apply to the Court for any order, direction or relief as provided under this Consent Decree. Nothing in this Consent Decree shall be deemed to create a right of any other party, including, but not limited to, the United States or any third party, against AR or the State to enforce the terms of this Consent Decree.

XIII. APPENDICES

29. The following appendices are attached to and incorporated into this Consent

Decree:

Appendix A – Map of State Lands

Appendix B – Maps of State-owned Property

Appendix C - Smelter Hill Area Uplands Resources Restoration Plan

XIV. MODIFICATION

30. Modifications. Except as expressly set forth in this Consent Decree, there shall be no modification of this Consent Decree, either before or after its entry by the Court without written agreement of the State and AR and approval by the Court.

31. Retention of Court's Authority Over Modifications. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

32. Lodging and Entry of the Decree. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. This Consent Decree is lodged with the Court concurrently with the Clark Fork Site Consent Decree. In addition and concurrently, the State shall submit for public comment its restoration plans for the three Step 2 Sites. The State reserves its right to withdraw from or withhold its consent to this Consent Decree if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. AR consents to the entry of this Consent Decree without further notice. In addition, the State reserves its right to withdraw from or withhold its consent to this Consent Decree if the comments regarding its restoration plans for the three Step 2 Sites disclose facts or considerations which indicate that the plans are inappropriate, improper, or inadequate. Each Party hereby agrees not to oppose entry

of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the State has notified AR in writing that it no longer supports entry of this Consent Decree, or the United States or the State has notified AR in writing that either the United States or the State no longer support entry of the Clark Fork Site Consent Decree.

33. Effect of State Withdrawal of Consent Decree. Should the State withdraw from or withhold its consent to entry of this Consent Decree as provided in Paragraph 32, the State and AR shall advise the Court in writing of the State's withdrawal or withholding of its consent, and the State shall advise the United States in writing that the State no longer supports entry of the Clark Fork Site Consent Decree.

34. Effect of Court's Decision to Not Approve Decree. If for any reason the Court should decline to approve this Consent Decree or the Clark Fork Site Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of either Party, and the terms of this Consent Decree may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

35. The undersigned representatives of AR and the State of Montana each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

XVII. ENTRY OF FINAL JUDGMENT

36. Upon the Court's approval of this Consent Decree, the Decree shall be entered as a final judgment under Fed. R. Civ. P. 54(b). The Court expressly determines that there is no just reason for delay in entering this judgment.

SO ORDERED THIS ____ DAY OF _____, 2008.

UNITED STATES DISTRICT COURT JUDGE

FOR THE STATE OF MONTANA:

Date: December 21, 2007

The Honorable BRIAN SCHWEITZER
Governor of Montana
State Capitol
Helena, Montana 59620-0801

Date: December 21, 2007

MIKE McGRATH
Attorney General

Date: December 21, 2007

ROBERT G. COLLINS
Supervising Assistant Attorney General
MARY CAPDEVILLE
Assistant Attorney General
Montana Department of Justice
Natural Resource Damage Program
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

FOR ATLANTIC RICHFIELD COMPANY:

Date: *December 21, 2007*

LUKE KELLER

President
28100 Torch Parkway
MC 27
Warrenville, IL 60555

Date:

WILLIAM J. DUFFY

Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202

Date:

RICHARD O. CURLEY, JR.

HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Post Office Box 8749
Denver, Colorado 80201-8749

Approved as to Form and Content:

Date:

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FOR ATLANTIC RICHFIELD COMPANY:

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Date:

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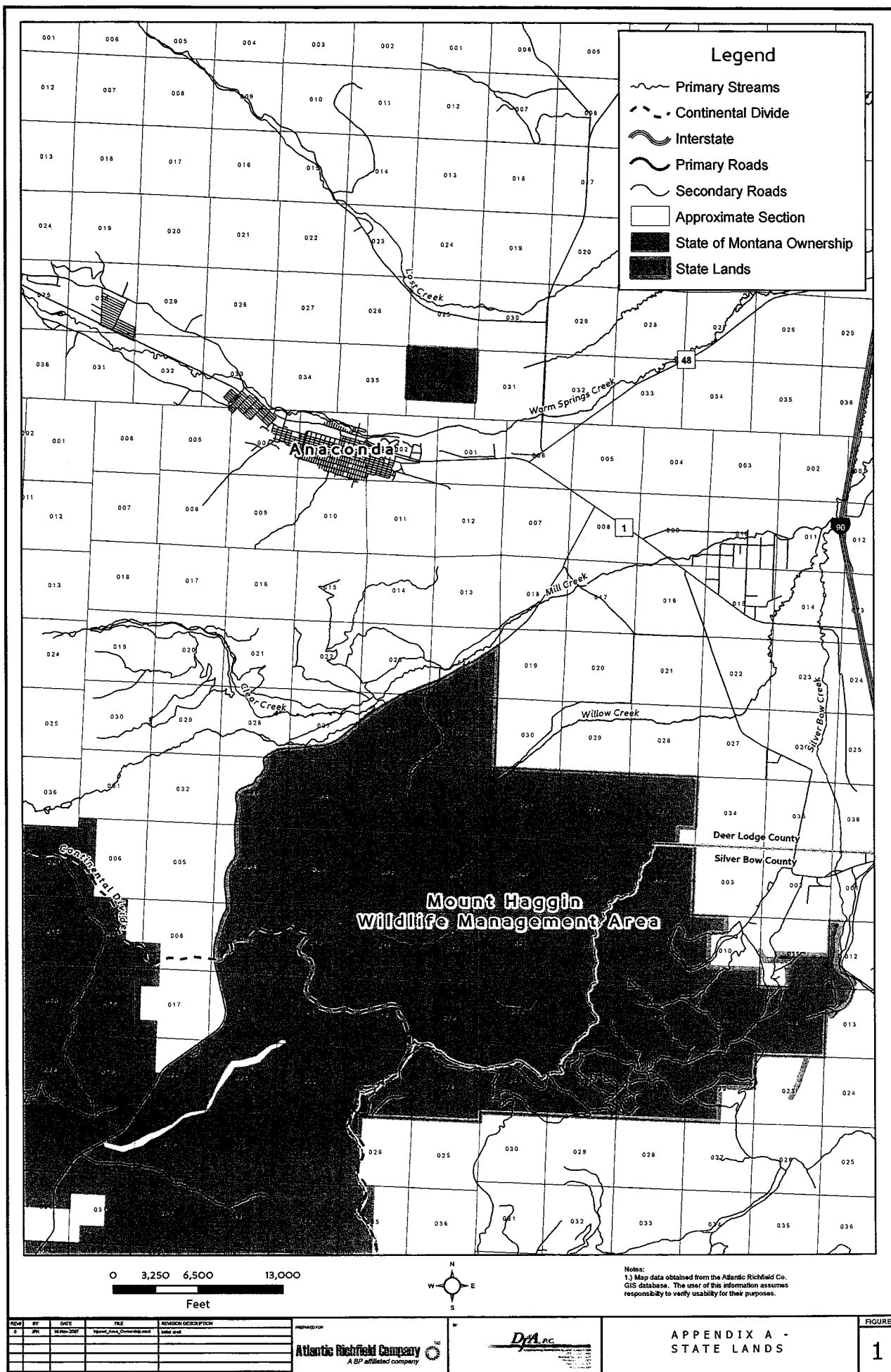
Approved as to Form and Content:

Date:

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Atlantic Richfield Company
4101 Winfield Road
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Warrenville, Illinois 60555

Appendix A

Map of State Lands



Appendix B

Maps of State-owned Property

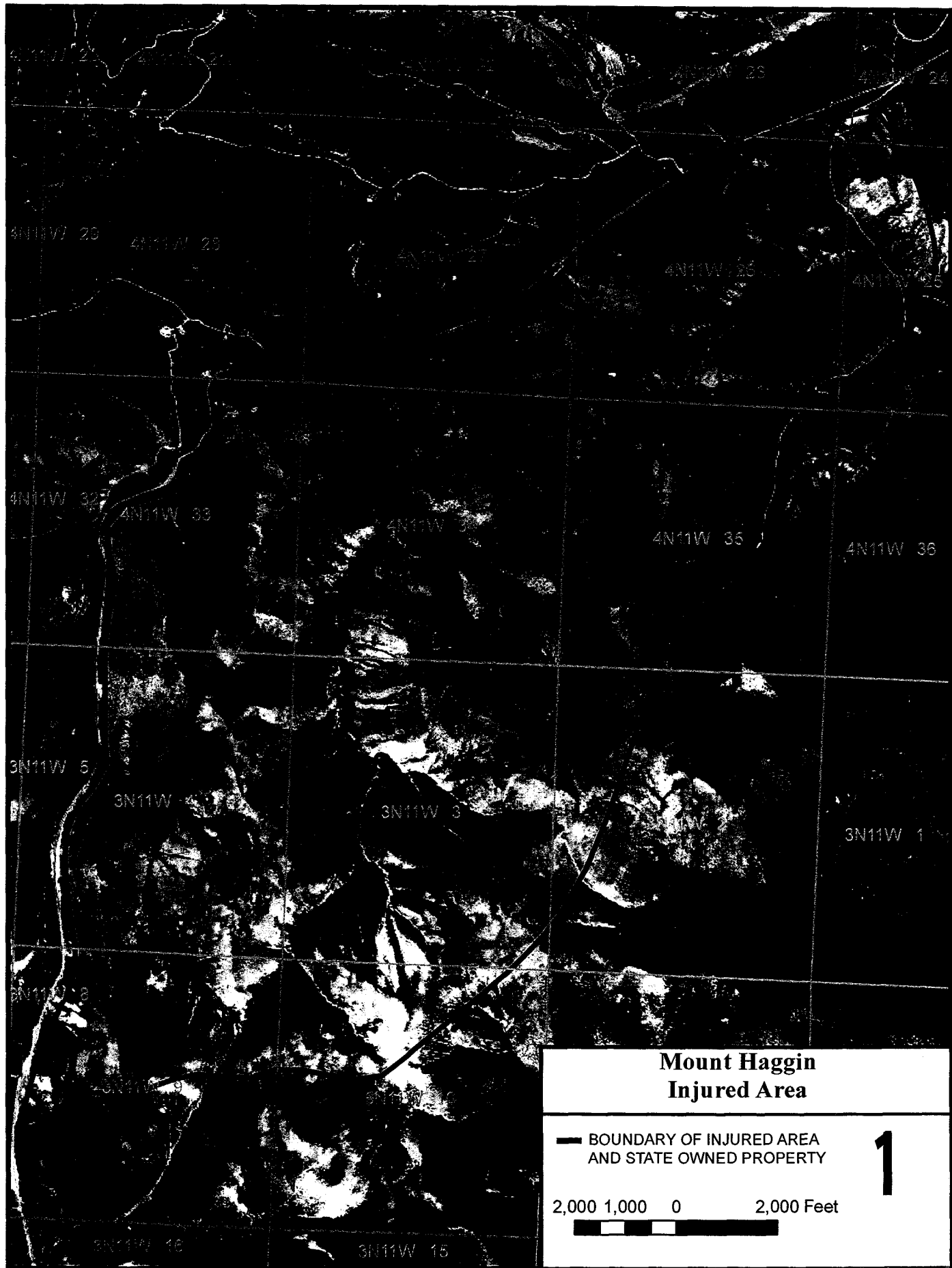


Figure 1



Figure 2

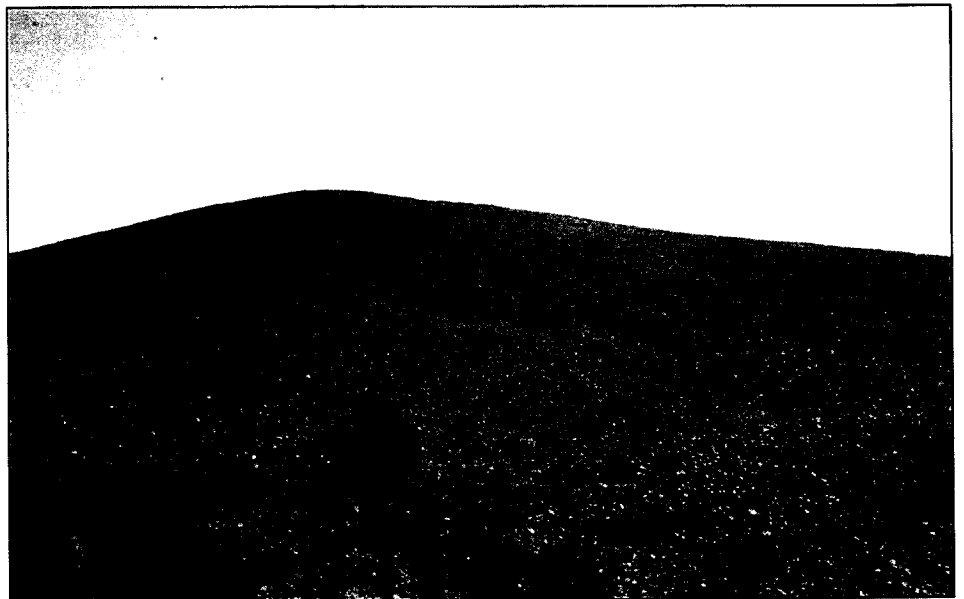
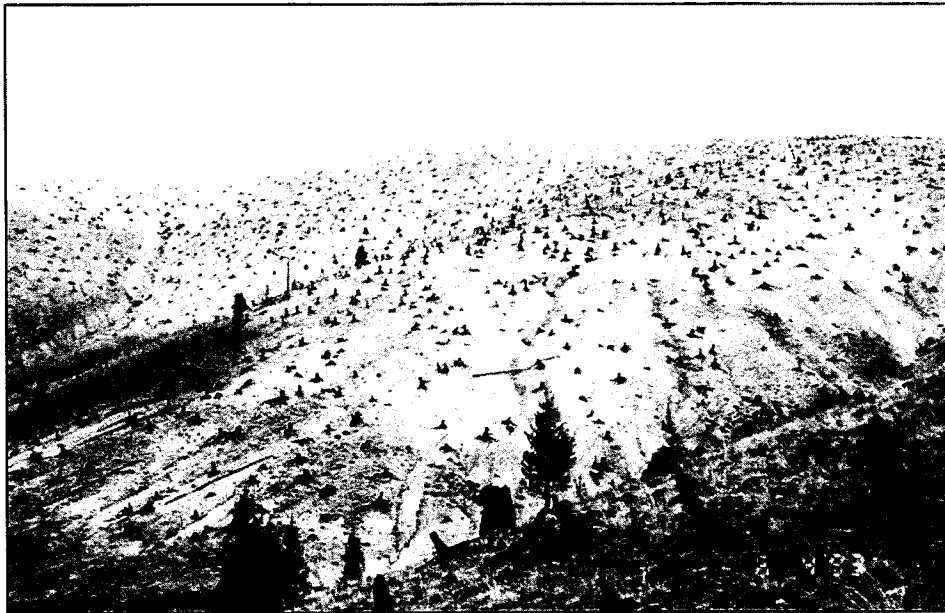
Appendix C

Smelter Hill Area Uplands Resources Restoration Plan

DRAFT CONCEPTUAL SMELTER HILL AREA UPLANDS
RESOURCES RESTORATION PLAN

Prepared by
Montana Department of Justice
Natural Resource Damage Program

DECEMBER 2007



**DRAFT CONCEPTUAL
SMELTER HILL AREA UPLANDS RESOURCES
RESTORATION PLAN**

Prepared by:

Montana Department of Justice
Natural Resource Damage Program
1301 E. Lockey
Helena, MT 59601

DECEMBER 2007

The Injured Areas are included in the Anaconda Smelter NPL Site. Therefore, in addition to the RDP, the State also relied on certain EPA Final Design Reports / Remedial Action Workplans (RAWPs/FDRs) in the development of the DCRP. As discussed above and in Section 4, natural resource damages are residual to CERCLA response actions. The State also relied on the RAWPs/FDRs because, under the terms of the consent decree, the State agreed to meet certain EPA remedial requirements through restoration on State-owned property within the Injured Areas.⁷ These remedial consent decree requirements, including attainment of performance standards,⁸ and obligation to perform additional remedial work and emergency response, are set forth in Appendix G.

This document characterizes the condition of natural resources in the Injured Areas, briefly describes the EPA response actions, summarizes the residual natural resource injury, and presents the State's actions for restoring the natural resources in the Injured Areas.

⁷ These EPA remedial requirements are referred to in the consent decree as the State Property Remedial Commitments.

⁸ "Performance Standards" are the cleanup standards and other measures of achievement of the goals of the remedial action contained in a record of decision, including applicable, relevant and appropriate requirements (ARARs).

prevalent than they would have been had the area not been injured. Approximately one square mile of aspen is present on both the Smelter Hill and Mount Haggin Injured Areas.

Absent hazardous substances in the soil, the Injured Areas on Smelter Hill and Mount Haggin would have vegetative cover consisting of approximately 70% forest and 30% grassland, and the Injured Area on Stucky Ridge would have vegetative cover consisting of approximately 30% forest and 70% grassland. Of the total 11,356 acres that exhibit gross injury, 6,993 acres (62%) would have been primarily forestland and 4,373 acres (38%) would have been primarily grassland.

The elimination of upland vegetation communities in the grossly injured area has caused a severe disruption to the ecosystem. Most notable has been the drastic reduction in the quantity and quality of wildlife habitat.

Section 3: CERCLA Response Actions

The Anaconda Regional Water, Waste, and Soils Operable Unit Record of Decision (September 1998) (ROD) including its upcoming Explanation of Significant Differences (ESD), as well as the related RAWPs/FDRs, set forth the remedial actions and the performance standards within the Anaconda Smelter NPL Site. The RAWPs/FDRs pertinent to the Injured Areas are the RAWPs/FDRs for Remedial Design Unit (RDU) 1 Stucky Ridge, RDU 3 Smelter Hill Uplands, RDU 14 Smelter Hill, and RDU 15 Mount Haggin Uplands.¹¹

To accomplish the ROD objectives, the RAWPs/FDRs generally require the following:

- Reduction of arsenic concentrations to meet applicable human health levels using a combination of revegetation treatment techniques
- Application of revegetation techniques, which may include deep tilling with lime additions and soils amendments, to reduce surface soil arsenic concentrations to human health levels and establish a diverse, effective, and permanent vegetation cover
- Application of revegetation technologies to establish a self-sustaining assemblage of plant species capable of stabilizing the soils against erosion and minimizing transport of contaminants to surface and ground water in order to meet water quality standards, maximizing water usage, re-establishing wildlife habitat, and accelerating successional processes
- Application of best management practices (BMPs), as appropriate
- Sediment basins to control storm water run-off where appropriate
- Institutional controls to maintain the integrity of remedial actions and prevent exposure to contaminated soil
- O&M activities

The State recognizes that implementation of the remedy will help provide site stability, reduce exposure of wildlife to contaminants of concern, and help provide sustainable vegetative cover in a number of areas.

¹¹ These FDRs provide for remedial actions within the related Injured Areas, but do not address all of the State's restoration goals and objectives.

Section 4: Residual Injury to be Addressed by Restoration

Residual injury is the injury to natural resources that remains substantially unimproved following implementation of the remedy. This concept is predicated on the fact that response actions can improve the condition of injured natural resources and thereby lessen natural resource injury. Although the State recognizes the significant remedy effort, the remedial actions fall short of restoration.

The State analyzed the areas of residual injury within the Injured Areas, and focused on three restoration categories for use of the consent decree settlement moneys. First, the remedial action on the Mount Haggin Injured Area specifies the revegetation of 137 acres in the Cabbage Gulch area in the north end of the Mount Haggin Injured area. The State believes residual injury remains outside of Cabbage Gulch, most significantly to the 850 acres of Bare and Degraded Areas identified in the RDP. These 850 acres of Bare and Degraded Areas within the 4,300 acre Mount Haggin Injured Area lack vegetation, soil organisms, and soil organic matter that provide nutrients and moisture retention. These Bare and Degraded Areas will therefore be addressed as discussed in Section 5.¹²

Second, the State determined that further restoration should be performed where the State is performing remedial action under the consent decree referred to in Section 1 and footnote 6.¹³ The integration of remedial action and restoration presents a cost-effective way to restore natural resources closer to baseline condition. The State is therefore augmenting the remedial action at the State-owned portion of Section 36 in the Stucky Ridge Injured Area and at Cabbage Gulch in the Mount Haggin Injured Area. These combined restoration/remediation actions are described in Section 5.

Third, it is expected that the above described restoration actions will not deplete the restoration account dedicated to the Injured Areas and there will be approximately \$4.0 million, plus interest, in the account after these restoration actions are implemented. It is anticipated that additional restoration will be implemented on land owned by Anaconda/Deer Lodge County within the Injured Areas using the remaining money in the account. Restoration actions within these areas will be coordinated with remedy for these areas. The precise scope of this additional restoration will be determined at a later date, although it is presently expected that such restoration will be based, at least in part, on the proposed restoration actions presented in the previously referenced report, *Ecological Restoration Plan for the Stucky Ridge and Smelter Hill Injured Area*.

¹² The 2002 RDP and its attachment, the *Ecological Restoration Plan for the Mount Haggin Injured Area*, identified 267 acres of bare areas (BA), 246 acres of steep degraded grassland areas (SDG), 344 acres of degraded grassland areas (DG) as requiring restoration treatments. Together, these impacted areas comprise the 857 acres of Bare and Degraded Areas identified in the RDP. These areas are approximately identified in the Montana Natural Heritage map, Figure 1.

¹³ As discussed in Section 1, the State agreed to meet certain EPA remedial requirements through restoration actions on State-owned property within the Injured Areas.

Section 5: State Actions

5.1 Restoration of the Bare and Degraded Areas in the Mount Haggin Injured Areas. The Mount Haggin restoration addresses vegetation of the Bare and Degraded Areas (approximately 850 acres). These areas are approximately identified on Figure 1. For these Bare and Degraded Areas, the State plans the following restoration activities:

- Lime application. Exact liming rates and lime type will be determined during design and is expected to be between 0 and up to 8 tons per acre. Aerial application is expected to be the most cost-effective method of application.
- Tree and shrub planting on most of the 850 acres. Tree and shrub plantings of about 500 stems per acre will be placed in these areas. Containerized plants will be at least 10 cubic inches in size and a year old. The exact spacing and types of plants will be determined during design. It is expected that islands of vegetation will be planted rather than uniform spacing throughout the area.
- Aerial fertilization in years three and five. Fertilization rates will be most likely be at a 300 - 400 pounds per acre rate and spread via helicopter.
- Seeding. Some areas will require mechanical incorporation of seed where equipment can be utilized; other areas will need seed applied by hand or via helicopter. Seed mixes and application rates are found in Appendix C.

The State will apply the vegetation considerations set forth in Appendix C.

5.2 Combined Restoration/Remediation in the Mount Haggin Injured Area. The State will perform the remedial action required in the RDU 15 RAWP/FDR, attached as Appendix D. Together, Figures 2A, 2B and the accompanying legend present the polygon delineation and required remedies. The RAWP/FDR includes, but is not limited to, the following actions:

- Tree planting (500 plants/acre) on 112 acres of steep slope areas. The exact spacing and types of plants will be determined during design. It is expected that islands of vegetation will be planted rather than uniform spacing throughout the area.
- Dozer basins on 18 acres. Dozer basin spacing on the 18 acres of SSR-3 areas. Exact placement will be determined during design.
- Tillage to 6 inches on 16 acres. Tillage of 6 inches to reduce metal concentrations by mixing the surface soil layers with the lower soil layers in order to help provide a suitable growth medium. Incorporation of organic matter may also be necessary.

- Tillage to 12 inches on 9 acres. Tillage of 12 inches to reduce metal concentrations by mixing the surface soil layers with the lower soil layers in order to help provide a suitable growth medium. Incorporation of organic matter may also be necessary.
- Fertilization and lime application on 25 acres of tillage areas. Liming in tilled areas will be at a rate of approximately 6 tons per acre. Fertilization, which will be incorporated during seedbed preparation, will consist of 12-16-30 (% nitrogen, % phosphate and % potassium) fertilizer.
- Seeding of all 137 acres.¹⁴ The 25 acres of tillage areas will be mechanically seeded. The remaining 112 acres will be seeded by hand, air or mechanically depending on the steepness of slope.
- Best Management Practices for stormwater concerns. BMPs are necessary during construction and until vegetation is established.
- Sediment Basins. Sedimentation basins will be established and maintained in Cabbage Gulch, Joyner Gulch and Muddy Gulch.
- Weed control as necessary.¹⁵ It is expected that aerial and hand application of chemicals, along with biological controls, will be necessary to control knapweed, whitetop, and leafy spurge. This effort will be the first component of remedial action on the site.

In addition, the State will perform the following restoration activities at Cabbage Gulch:

- Lime application on 112 acres of steep slope areas. Exact liming rates and lime type will be determined during design but is expected to be between 0 and up to 8 tons per acre. Aerial application is expected to be the most cost-effective method of application.
- Aerial fertilization of all 137 acres in years three and five. Fertilization rates will be most likely be at a 300 – 400 pounds per acre rate and spread via helicopter. Exact fertilization rates per acre will be determined during design.

The additional restoration actions may affect the timing and sequencing of the Cabbage Gulch activities since remediation and restoration actions will occur concurrently. Mount Haggin restoration, including the Cabbage Gulch remedial

¹⁴ The seed mix will be modified slightly from that prescribed in the RDU 15 FDR and will instead consist of the species set forth in Appendix C.

¹⁵ The State plans aggressive weed control in this area.

components, will occur in 2008 – 2013. Timing of anticipated activities for Mount Haggin activities are:

- 2008 or 2009: weed control
- 2010: lime application
- 2011 - 2013: fertilizing, seeding and planting
- 2014 - 2016: monitoring

State actions at the Mount Haggin Injured Area, consisting of the restoration of the Bare and Degraded Areas and the combined restoration / remediation at Cabbage Gulch, and other areas is estimated to be \$6.7 million. More detailed costing is presented in Appendix F.

The State will apply the vegetation considerations set forth in Appendix C.

5.3 Combined Restoration / Remediation on the Stucky Ridge Injured Area

The State will perform the remedial action required in the RDU 1 RAWP/FDR, attached as Appendix E on the State-owned portion of Section 36 (480 acres). Figure 3 presents the polygon delineation and required remedies. The RAWP/FDR includes, but is not limited to, the following actions:

- Tillage to a depth of 12 inches. Tillage of 12 inches on 335 acres to reduce metal concentrations by mixing the surface soil layers with the lower soil layers in order to help provide a suitable growth medium. Incorporation of organic matter may also be necessary, however, it is not expected that significant organic matter additions will be necessary, since preliminary and nearby data shows significant amounts of organic matter in the soils.
- Lime application. Liming in tilled areas will average about 22 tons per acre and will occur after one tilling pass.
- Seeding.¹⁶ Along with the seed mix proposed will be the addition of shrub seed to enhance species composition.
- Fertilizing. Fertilization, which will be incorporated during seedbed preparation, will consist of 12-16-30 (% nitrogen, % phosphate and % potassium) fertilizer.
- Planting of shrubs and trees on 90 acres designated as steep slope areas. The exact spacing and types of plants will be determined during design. It is expected that islands of vegetation will be planted rather than uniform spacing throughout the area.

¹⁶ The seed mix will be modified slightly from that prescribed in the RDU 1 FDR and will instead consist of the species set forth in Appendix C.

- Dozer basins on 50 acres of steep slope areas. Dozer basin spacing on the 50 acres of SSR-3 areas will be determined during design.
- Stone check dams and other best management practices. BMPs are necessary during construction and until vegetation is established.
- Weed control. Aerial chemical weed control has been occurring in Section 32 for a number of years. Further controls will be evaluated during design.

In addition, the State will perform the following restoration activities at the State-owned portion of Section 36:

- Lime application on 90 acres of steep slope areas. Exact liming rates and lime type will be determined during design and is expected to be about 20 tons per acre. Aerial application is expected to be the most cost effective method of application.
- Stripping and grading on a portion of the tillage areas. These areas contain highly impacted soils and are proposed for stripping of the upper 4 inches and consolidation in an area on Stucky Ridge in Section 36. Tilling and liming of the underlying subgrade will be done after stripping is performed.
- Planting of shrubs and trees on half the tillage and rock areas. 177 acres are slated to be planted with shrubs and trees. It is expected that islands of vegetation will be planted rather than uniform spacing throughout the area.
- Aerial fertilization on the tillage and steep slope areas in years three and five. Fertilization rates will be most likely occur at a 300 - 400 pound per acre rate and spread via helicopter. Exact fertilization rates per acre will be determined during design.

The additional restoration actions may affect the timing and sequencing of activities on the State-owned portion of Section 36. The State will apply the vegetation considerations set forth in Appendix C. Stucky Ridge restoration / remediation will occur from 2008 to 2012. Timing of anticipated activities for Stucky Ridge are:

- 2008: weed control
- 2009: stripping, lime application
- 2010 - 2012: fertilizing, seeding and planting
- 2013 - 2017: monitoring

No remedial action will be performed by the State within the Stucky Ridge Injured Area outside of the State-owned portion of Section 36, although EPA will require remedial action be performed by the potentially responsible party, as discussed in Section 3, and as set forth in the RDU 1 and RDU 3 RAWPs/FDRs. No remedial action will be performed by the State within the Smelter Hill Injured Area, although

EPA will require remedial action be performed by the potentially responsible party, as discussed in Section 3, and as set forth in the RDU 14 RAWP/FDR.

The State-owned portion of Section 36 combined restoration/remediation is estimated to cost \$2.7 million. More detailed costing is presented in Appendix F.

5.4 Further Restoration on County-Owned Lands Within the Injured Areas

The costs for the planned restoration on State-owned land in the Injured Areas are estimated at \$9.4 million. As discussed in Section 1, the consent decree allocates approximately \$13.3 million, plus the interest earnings on this amount, to the Smelter Hill Area Uplands State Restoration Account. The expected costs for implementation of the actions on State-owned lands are an estimate, but it is expected that about \$4.0 million, or more, will remain in the Smelter Hill Area Uplands State Restoration Account after implementation of those actions. This money will be used to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources on the County-owned lands within the Injured Areas, including restoration consistent with the restoration actions specified in the RDP. This DCRP may be amended to provide for specific additional restoration actions that are coordinated with remedy actions on these County-owned lands after consideration of further input by the County and the public as to what particular restoration actions should be implemented.

REFERENCES

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

FIGURES

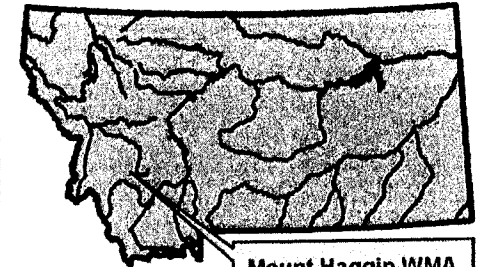
- Figure 1 Mount Haggin Injured Area Vegetation Map depicting bare and degraded areas
- Figure 2A Cabbage Gulch Remedial Areas (polygon remedy map)
- Figure 2B Larger map of Cabbage Gulch Remedial Areas (polygon remedy map)
Cabbage Gulch Remedial Prescription List and Legend
- Figure 3 Stucky Ridge Remedial Areas (polygon remedy map)

Mt Haggin Injured Area Vegetation Map

Vegetation Cover

Vegetation Types

-  Bare
-  Bare greater than 35% slope
-  Forested - Conifer
-  Dense Shrub/Aspen Cover
-  Moderate Shrub/Aspen Cover With Scattered Conifers
-  Degraded Grassland
-  Degraded Grassland greater than 35% slope



Mount Haggin WMA

Data Source: This map is based on 2005 1-meter resolution color infrared imagery and field sampling. Background imagery outside of the study area is 2005 1-meter resolution natural color imagery. Roads are from the US Census Bureau's Tiger 1990 Highway layer. Streams are from National Hydrography Dataset.

Publication Date: July 2006

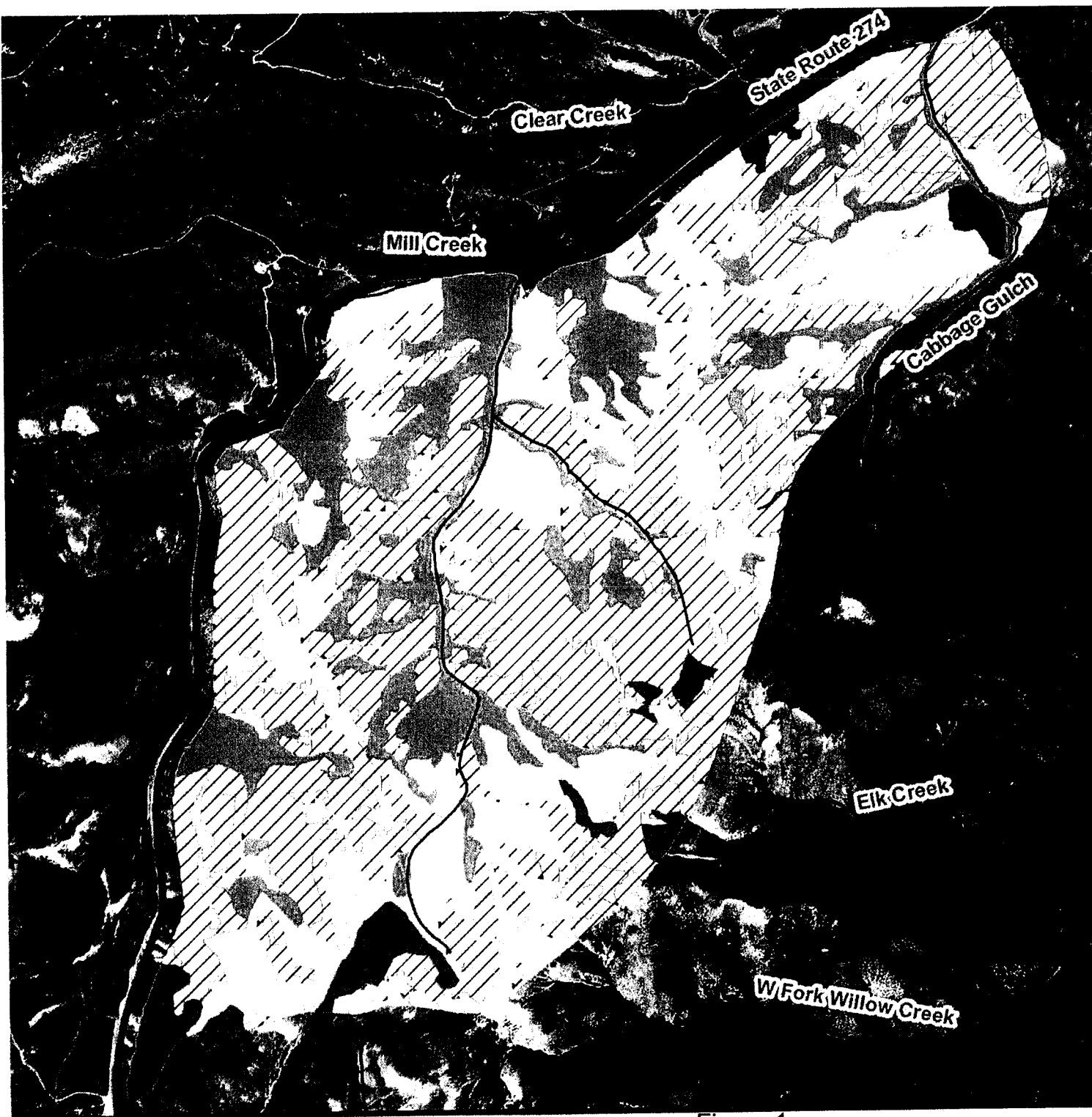
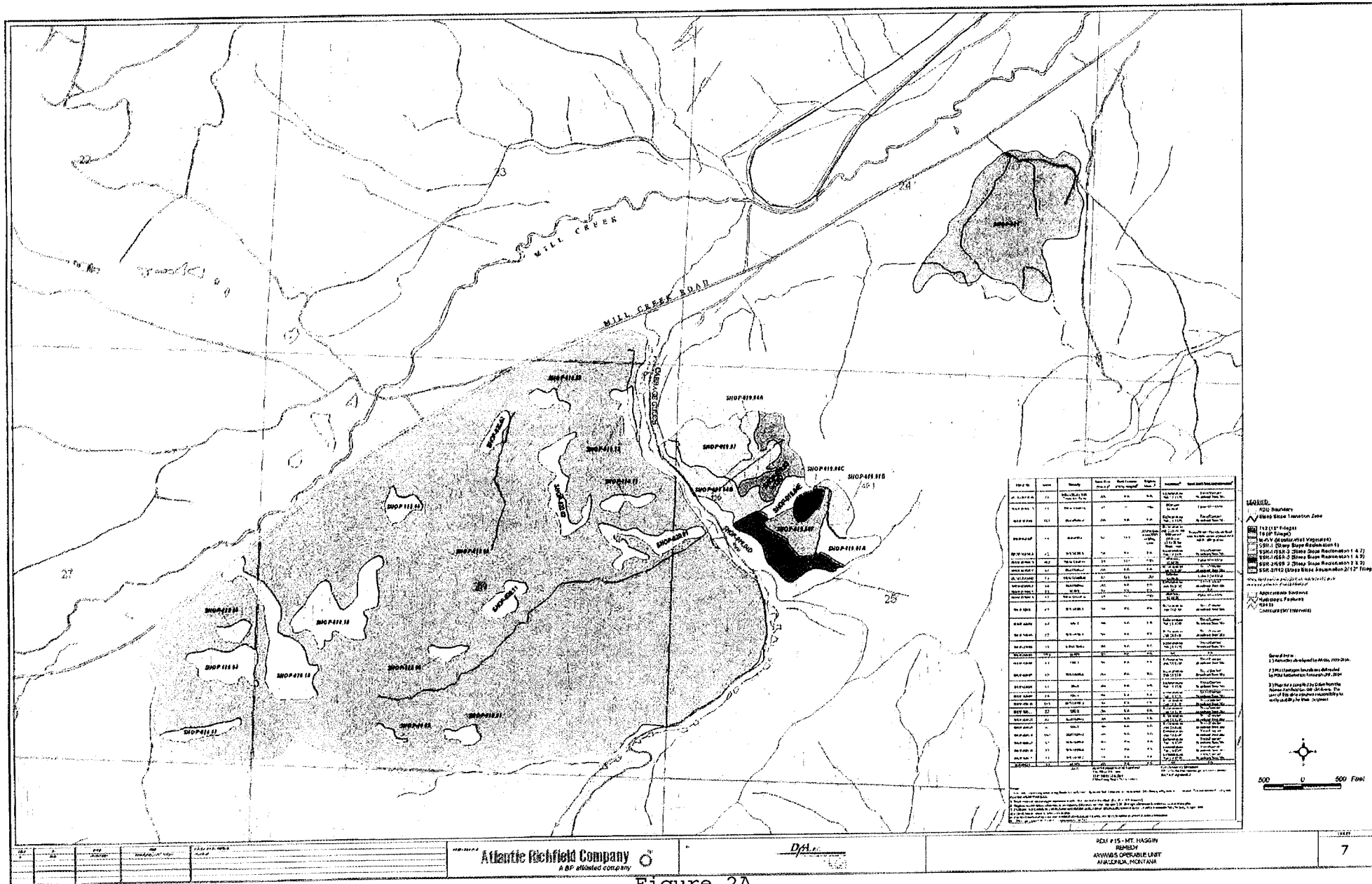


Figure 1



MILL CREEK ROAD

CABBAGE CREEK

Mount Haggir
Area #1

SHOP-020.09

SHOP-019.04A

SHOP-020.14

SHOP-019.02

SHOP-019.04C

SHOP-019.01B
49.1

SHOP-020.03

SHOP-020.12

SHOP-019.04B
120

SHOP-019.03
41.20

SHOP-019.04E

SHOP-020.01

SHOP-019.04D
99

SHOP-019.04F

SHOP-019.01A

PRLU ID	Acres	Remedy	Lime Rate (T/acre) ¹	Rock Content (% by weight) ²	Organic Matter ³	Fertilizer ⁴	Seed Mix/Plant Requirements ⁵
SHOP-019-01-A	5.6	SSR-1/SSR-2 with Transition Zone	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-019-01-B	4.1	T6 to 6 inches	2.7	22.4	TBD	500#/acre 12-16-30	Upland Seed Mix
SHOP-019-02	12.0	SSR-2/SSR-3	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-019-03 ⁶	9.2	SSR-2/T12	8.7	12.1	NA for SSR areas/TBD for tillage areas	Reforestation Pak (11-17-9) for SSR areas/ 500#/acre 12-16-30 for tillage areas	Trees/Shrubs/Broadcast Seed Mix for SSR areas/ Upland seed mix for tillage areas
SHOP-019-04-A	6.2	SSR-2/SSR-3	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-019-04-B	10.2	T6 to 6 inches	5.3	15.3	TBD	500#/acre 12-16-30	Upland Seed Mix
SHOP-019-04-C	2.5	SSR-1/SSR-3	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-019-04-D	1.5	T6 to 12 inches	8.7	12.1	TBD	500#/acre 12-16-30	Upland Seed Mix
SHOP-019-04-E	3.6	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-019-04-F	7.0	M-WV	NA	NA	NA	NA	NA
SHOP-019-04-G	7.7	T6 to 12 inches	5.9	21.4	TBD	500#/acre 12-16-30	Upland Seed Mix
SHOP-020-01	6.5	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-02	2.3	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-03	6.7	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-04	7.5	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-05	575.4	M-WV	NA	NA	NA	NA	NA
SHOP-020-06	1.5	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-07	1.9	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-08	0.7	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-09	1.9	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-10	14.0	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-11	3.5	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-12	2.2	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-13	2.7	SSR-1	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-14	14.9	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-15	1.9	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-16	2.9	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-020-17	3.0	SSR-1/SSR-2	NA	NA	NA	Reforestation Pak (11-17-9)	Trees/Shrubs/ Broadcast Seed Mix
SHOP-021	56.5	M-WV	NA	NA	NA	NA	NA

Key:

M-WV= Monitor-Well Vegetated
T6= Till to 6 inches
T12= Till to 12 inches
SSR= Steep Slope Reclamation

PR= Previously Reclaimed
TBD= To Be Determined, prior to remediation.
NA= Not Applicable

Notes:
1. Lime rate shown represents application rate for remedy identified. Lime rate to be corrected for lime quality and rock content. For correction factors, see remedial action work plan.

2. Rock content percentages represent that for the interval to be tilled. (i.e. 6" or 12" intervals)

3. Organic matter application rate to be corrected for moisture content and LOD. See specifications in remedial action work plan.

4. Fertilizer: Reforestation Pak for trees and shrubs in SSR areas, granular for seeded areas. Numbers indicate %N, %P₂O₅, %K₂O. See specifications in remedial action work plan.

5. For seed mix/plant species and seeding rate/spacing density, see specifications in remedial action work plan.

6. 15% of polygon SHOP-019-03 is assumed to be T12

LEGEND:

RDU Boundary

Steep Slope Transition Zone

T12 (12" Tillage)

T6 (6" Tillage)

M-WV (Monitor-Well Vegetated)

SSR-1 (Steep Slope Reclamation 1)

SSR-1/SSR-2 (Steep Slope Reclamation 1 & 2)

SSR-1/SSR-3 (Steep Slope Reclamation 1 & 3)

SSR-2/SSR-3 (Steep Slope Reclamation 2 & 3)

SSR-2/T12 (Steep Slope Reclamation 2/ 12" Tillage)

*Red text below polygon ID represents post
remedy arsenic concentration

Approximate Sections

Hydrologic Features

Roads

Contours (50' Intervals)

General Notes:

1.) Remedies developed by ARCO, 1999-2006.

2.) PRLU polygon boundaries delineated
by MSU Reclamation Research Unit, 2004.

3.) Map data compiled by DJ&A from the
Atlantic Richfield Co. GIS database. The
user of this data assumes responsibility to
verify usability for their purposes.



500 0 500 Feet



RDU #15 - MT. HAGGIN
REMEDY
ARWW&S OPERABLE UNIT
ANACONDA, MONTANA

Legend on Figure 2A

SHEET

7

RAWP Boundary
Steep Slope Transition Zones

Test Pit Locations

PR.1.1 Polygon Remedy

PRUJ Polygon Remedy

T12 (12" Tillage)

T6 (6" Tillage)

SSK-1 (Steep Slope Reclamation #1)

SSR-1/SSR-2 (Steep Slope Reclamation #1 & #2)

SSR-2/SSR-3 (Steep Slope Reclamation #2 & #3)

SSR-4 (Steep Slope Reclamation #4)

M-WV (Monitor-Well Vegetated)

M-WV/J6 (Monitor-Well Vegetated/ 6" Tillage)

M-WV/12 (Monitor-Well Vegetated/12" Tillage)

 PR (Previously Reclaimed)

Tillage Demo

Rock or Facility

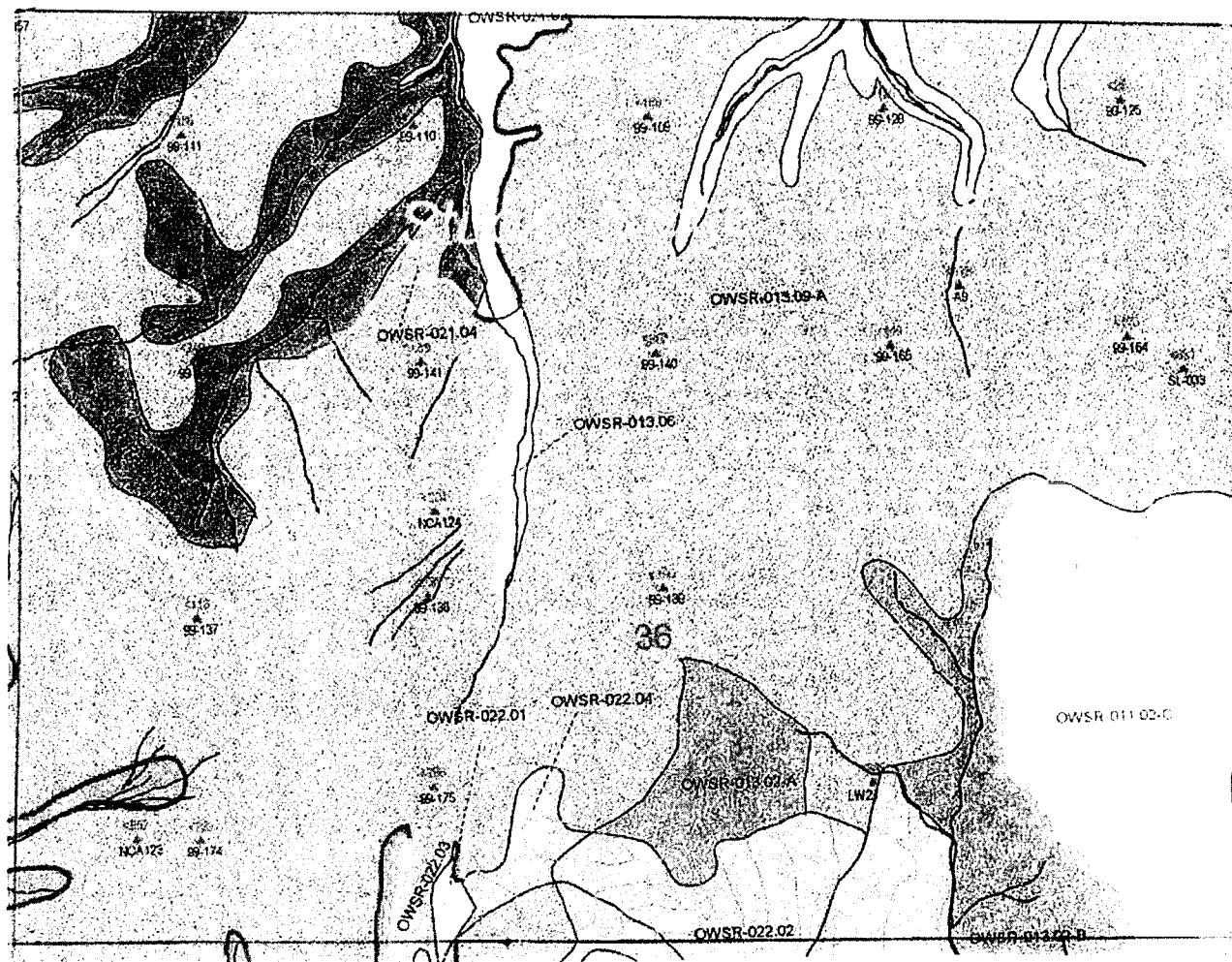
Roads

Hydrologic Features

Contours (50° Intervals)

Approximate Section Line

Figure 3
State Owned Section 36 on Stucky Ridge.



Plan Appendix G

State Consent Decree Obligations

Consent Decree Obligations of the State

The *Consent Decree for the Clark Fork River Operable Unit and for Remaining State of Montana Clark Fork Basin Natural Resource Damages Claims*, Civil Action No. CV89-039-BU-SEH (Clark Fork Site Consent Decree) contains some important commitments made by the State at State-owned property within the Injured Areas. In addition, the State has made specific commitments to the Atlantic Richfield Company (AR) in State CD II. Also, the State has made several commitments contained in a Site Specific Memorandum of Agreement (SMOA) between EPA and the State. The commitments contained in these documents are summarized below. In the case of conflict between this summary and the consent decrees and the SMOA, the provisions of the consent decrees and the SMOA will control.

- 1. Use of Restoration Account.** The State commits to use the Smelter Hill Area Uplands State Restoration Account to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources as provided in this DCRP. This includes implementation of the State Property Remedial Commitments discussed below, including implementation of the work, attainment of performance standards, emergency response, and additional remedial work. The use of the restoration account also includes reimbursement to AR should EPA order AR to perform any activities the State is required to perform.
- 2. Commitment to perform remedial action on certain State-owned lands (State Property Remedial Commitments).** The State commits to perform the work on the State-owned portion of Section 36 set forth in the RDU 1 Stucky Ridge FDR/RAWP (June 2005) as provided for in this DCRP. The State also commits to perform the work identified in the RDU 15 Mount Haggins Uplands FDR/RAWP (December 2007) as provided for in this DCRP. This work, together with certain potential additional response actions, comprise the State Property Remedial Commitments under the Clark Fork Site Consent Decree. The State commits to perform additional response actions within the "scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments," as defined in Subparagraph 66.b of the Clark Fork Site Consent Decree if necessary to achieve and maintain the performance standards set forth in this DCRP or maintain the effectiveness of the portion of the remedy implemented by the State, as provided for in Subparagraph 66.b. of the Clark Fork Site Consent Decree.
- 3. Compliance with laws.** The State commits to implement the State Property Remedial Commitments in accordance with federal and state law, including ARARs.
- 4. Emergency Response.** The State commits to implement emergency measures in the event of a release or threatened release during performance of the State Property Remedial Commitments at the State-owned property.

5. **Additional Remedial Work.** The State commits to AR to perform additional response actions, if any, or pay costs of response actions, if any, at State Lands as defined in State CD II, as provided for in State CD II.

6. **EPA Approvals.** The State commits to EPA approvals of all required plans and reports set forth below, pertaining to the design and implementation of the State Property Remedial Commitments, subject to dispute resolution.

Specific plans and reports requiring EPA concurrence or approval for RDU 1 (State-owned portion of Section 36) and RDU 15

- Amendments to the Smelter Hill Area Uplands Resources Restoration Plan revising the nature or extent of the performance standards for the State Property Remedial Commitments.
- Remedial Action Work Plan for RDU 1 (for the State owned portion of Section 36) (finalized and approved), Remedial Action Work Plan for RDU 15 (finalized and approved), and as set forth in the Remedial Action Work Plans, the following for each: an operation and maintenance plan, vegetation management plan, inspection & maintenance plan for engineered controls (e.g., sediment basins), a pre-construction summary, including pre-design (polygon delineation, organic matter investigation, lime evaluation, construction BMPs, etc.), wetland delineation discussion, historic and cultural review discussion, endangered species discussion, and health and safety plan, and a remedial action schedule. The State will incorporate operable unit-wide plans where appropriate. Unless a plan has otherwise been previously finalized and approved, a draft of these plans will be provided to EPA for review and comment, and final plans, except for health and safety plans, are subject to EPA approval.
- Request for Change (RFC) – such as design changes
- Remedial Action Construction Completion Report, including as built drawings, RFCs, quality assurance results, and confirmation sampling, if any
- Annual Monitoring and Maintenance Report for vegetation and sediment basins
- Request for Maintenance (RFC during O&M)
- Performance Standard Compliance Determination Reports
- Institutional Control Plans for State Property Remedial Commitments
- Step 4 Wetland Accounting

- Modification to seed mixes
- Any short term vegetation monitoring plans
- O & M plans, including any surface water management plan, vegetation management plan, groundwater management plan, and engineered controls inspection and management plan.
- Plans required under the additional work provision

7. **Commitment to attain Performance Standards.** The State Property Remedial Commitments include the attainment of performance standards, including ARARs, set forth in the ARWWS ROD and its upcoming ESD.

RDU 1 Performance Standards

The State's implementation of the State Property Remedial Commitments includes the attainment of performance standards identified in the Remedial Action Work Plan / Final Design Report for the State-owned portion of Section 36 in Remedial Design Unit 1 of the Anaconda Smelter NPL Site (June 2005) as provided for in this DCRP. No attainment by the State of these performance standards is required outside of the State-owned portion of Section 36 within RDU 1. The performance standards set forth in the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 1 and its associated management plans are summarized below. In the case of conflict between the provisions in this paragraph and the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 1 and its associated management plans, the provisions the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 1 and its associated management plans will control.

- *Vegetation / Soils.* On the State-owned portion of Section 36, the soils cannot exceed the human health arsenic level for the land use. For the RDU 1 State-owned property, that level is 1,000 ppm arsenic, with the exception of steep slopes areas, where the performance standard is 2,500 ppm. The vegetation performance standards that must be met on the State-owned portion of Section 36 will be set forth in the upcoming site-wide Vegetation Management Plan.¹
- *Surface water.* The surface water performance standards that must be met on the State-owned portion of Section 36 will be set forth in the upcoming site-wide Surface Water Management Plan and any drainage specific surface water management plan.² There is no surface water within the State-owned portion of Section 36. However, a portion of Section 36 drains toward Lost Creek and a

¹ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

² This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

portion of the area drains toward Warm Springs Creek. Attainment of surface water performance standards on the State-owned portion will likely be limited to implementation of best management practices (i.e., dozer basins), engineered controls, and vegetative cover on the State-owned portion of Section 36.

- *Groundwater.* The groundwater performance standards that must be met on the State-owned portion of Section 36 will be set forth in the upcoming site-wide upcoming Groundwater Management Plan.³ The groundwater standard for arsenic for the alluvial and bedrock aquifers beneath the State-owned portion of Section 36 has been waived. Attainment of groundwater performance standards on the State-owned portion will be limited to implementation of a vegetative cover.
- *Air.* The FDR requires standard construction practices, such as periodic dust suppression, to attain these standards during construction activities on the State-owned portion of Section 36.
- *Institutional controls.* The institutional controls performance standards that must be met on the State-owned portion of Section 36 will be set forth in the site-wide Institutional Controls Management Plan.⁴
- *Special resources.* The FDR requires compliance with requirements related to special resources, such as endangered species and historic properties on the State-owned portion of Section 36.

RDU 15 Performance Standards

The State's implementation of the State Property Remedial Commitments includes the attainment of performance standards identified in the Remedial Action Work Plan / Final Design Report for RDU 15 of the Anaconda Smelter NPL Site (December 2007) as provided for in this DCRP. The Remedial Action Work Plan / Final Design Report contemplates construction actions within the 137 acre Cabbage Gulch area in the north end of the Mount Haggin Injured Area. The Remedial Action Work Plan / Final Design Report does not require physical actions in the Mount Haggin Injured Area outside of the 137 acre Cabbage Gulch area other than monitoring, weed spraying, and, for Cabbage Gulch, Muddy Creek basin and Joyner Creek basin, the installation of a sedimentation basin at the mouth of each. No attainment of vegetation performance standards will be required in Remedial Design Unit 15 outside of the 137 acre Cabbage Gulch area; however, EPA may require additional vegetation in RDU 15, as provided in Subparagraph 66.b of the Clark Fork Site Consent Decree, if necessary to meet the surface water and groundwater performance standards as set forth below. The performance standards set forth in the Remedial Action Work Plan / Final Design Report

³ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

⁴ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

for Remedial Design Unit 15 and its associated management plans are summarized below. In the case of conflict between the provisions in this paragraph and the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 15 and its associated management plans, the provisions the Remedial Action Work Plan / Final Design Report for Remedial Design Unit 15 and its associated management plans will control.

- *Vegetation / Soils.* Within RDU 15, the soils cannot exceed the human health arsenic level for the land use. For steep slope areas within RDU 15, the performance standard is 2,500 ppm arsenic. The performance standard for soils in any remaining areas is 1,000 ppm arsenic. The vegetation performance standards that must be met within RDU 15 will be set forth in the upcoming site-wide Vegetation Management Plan.⁵
- *Surface water.* The surface water performance standards that must be met at RDU 15 will be set forth in the site-wide Surface Water Management Plan.⁶ The final performance standards pertaining to RDU 15 are identified in the Mill Creek SWMP, a component of the site-wide Surface Water Management Plan. RDU 15 is within the Mill Creek basin, and is one of the contributors to Mill Creek surface water.
- *Groundwater.* The groundwater performance standards that must be met in RDU 15 will be set forth in the site-wide Groundwater Management Plan.⁷ The groundwater standard for arsenic for the bedrock aquifer beneath RDU 15 has been waived. Attainment of groundwater performance standards in RDU 15 will be limited to implementation of a vegetative cover.
- *Air.* The FDR requires standard construction practices, such as periodic dust suppression, to attain these standards during construction activities in RDU 15.
- *Institutional controls.* The institutional controls performance standards that must be met in RDU 15 will be set forth in the site-wide Institutional Controls Management Plan.⁸
- *Special resources.* The FDR requires compliance with requirements related to special resources, such as endangered species and historic properties in RDU 15.

⁵ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

⁶ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

⁷ This plan is being developed by AR, and will be subject to review and approval by EPA and Montana DEQ.

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